



WATER RESOURCES RESEARCH GRANT PROPOSAL

Project ID: 2005DE57B

Title: The Impact of the Solid Waste Decision on Isolated Wetlands in Delaware

Project Type: Research

Focus Categories: Wetlands, Law, Institutions, and Policy, Management and Planning

Keywords: None

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Federal Funds: \$1,750

Non-Federal Matching Funds: \$3,500

Congressional District: At Large

Principal Investigators:

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Abstract

The project builds upon the work of Duke and Sentoff in a previous DWRC grant. The Solid Waste decision in 2002 invalidated federal authority—by the Army Corps of Engineers (Corps) under the Clean Water Act Amendments of 1977—to regulate private behavior on isolated wetlands. Delaware, like most states, had not implemented their own statutory protections of isolated wetlands. Duke and Sentoff (2003) report secondary data, suggesting that between 29,000 and 35,000 acres of isolated wetlands in Delaware may have been exposed to development following Solid Waste. Duke and Sentoff's (2003) legal analysis concludes that Delaware's most effective institution to protect these wetlands was to issue a regulatory moratorium on filling—avoiding regulatory takings issues using the Tahoe precedent—and then enacting a new state law to empower the Delaware Department of Natural Resources and Environmental Control of Delaware (DNREC) to regulate land uses affecting isolated wetlands.

Initial legislative attempts failed, however. No statutory authority currently exists for DNREC to regulate these wetlands. Therefore, since 2002 owners of approximately 30,000 acres of isolated wetlands have been able to pursue land-use activities, which

were prohibited prior to Solid Waste. It is critically important for the policy process to evaluate the impact of private land-use activities in the three years following Solid Waste and to make predictions about future impacts.